

**MINUTES
for the
SIXTH MEETING
of the
INDIAN AFFAIRS COMMITTEE**

**October 26-27, 2015
Albuquerque
Pueblo of San Felipe**

The sixth meeting of the Indian Affairs Committee (IAC) was called to order by Senator John Pinto, co-chair, on Monday, October 26, 2015, at 10:12 a.m. at Southwestern Indian Polytechnic Institute (SIPI) in Albuquerque.

Present

Rep. Sharon Clahchischilliage, Co-Chair
Sen. John Pinto, Co-Chair
Rep. D. Wonda Johnson (10/27)
Rep. Georgene Louis (10/27)
Rep. James Roger Madalena
Sen. Richard C. Martinez
Sen. Cliff R. Pirtle (10/26)
Sen. Nancy Rodriguez
Sen. Benny Shendo, Jr.
Rep. James E. Smith
Sen. William P. Soules

Absent

Sen. Ted Barela
Rep. Zachary J. Cook
Rep. Yvette Herrell
Sen. John C. Ryan

Advisory Members

Rep. Eliseo Lee Alcon
Sen. Carlos R. Cisneros (10/26)
Sen. Cisco McSorley
Rep. Debbie A. Rodella
Rep. Patricia Roybal Caballero
Sen. Clemente Sanchez (10/27)

Sen. Stuart Ingle
Sen. Daniel A. Ivey-Soto
Rep. Patricia A. Lundstrom
Sen. George K. Munoz
Rep. Nick L. Salazar

(Attendance dates are noted for members not present for the entire meeting.)

Staff

Peter Kovnat, Staff Attorney, Legislative Council Service (LCS)
Mark Edwards, Staff Attorney, LCS
Michelle Jaschke, Researcher, LCS
Alexandria Tapia, Contractor, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file and are located on the New Mexico Legislature website (www.nmlegis.gov). Please see handouts for more presentation details.

Monday, October 26

Welcome and Status Update

Dr. Sherry Allison, president, SIPI, gave the invocation. The committee held a moment of silence for the four-year-old girl shot recently in Albuquerque. Senator Pinto then asked the committee members, staff and audience to introduce themselves. He then asked Representative Clahchischillage to chair the rest of the meeting.

Dr. Allison welcomed the committee to SIPI. SIPI is one of two colleges run by the U.S. Department of the Interior (DOI). The other is Haskell Indian Nations University in Lawrence, Kansas. SIPI has 164 acres of land and is considered a federal enclave. The land was donated by a family, expressly for the education of Indians. At any one time, 65 different tribes are represented in the student population; currently, 50% of the students are Navajo and 30% are pueblo. However, all students at SIPI are registered members of federally recognized tribes.

Dr. Allison said that when she started, SIPI was in danger of losing its accreditation. It took five years to rebuild the entire system at SIPI to meet the accreditation requirements. She said that part of the accreditation issue was that the accrediting entity had additional requirements beyond the requirements of the DOI, including having a regular audit. Now, SIPI gets a financial review each year.

Dr. Allison then said that SIPI is focused on renovation of the campus infrastructure and building student enrollment and graduation rates. For the first time in 40 years, the campus buildings are starting to be renovated. SIPI is getting federal Title III funding for some of the renovations. Phase 1 has begun and will move the administration building across campus. The next phase will be to start work on a student union building to house a bookstore, cafeteria and meeting rooms. SIPI is working to change its culture from a federal program mindset to a college campus mindset.

SIPI's internal analysis determined that the college's full capacity is 702 students, but enrollment has been dropping and the college has hired a recruiting manager to increase enrollment. Dr. Allison said that SIPI prides itself in preparing students for four-year institutions elsewhere, but it needs to improve its own graduation rate, which is approximately 10%. The school will be hosting a tribal forum to look at the curriculum and how to build student interest. Responding to questions from committee members, Dr. Allison said that proposals to increase training for health care professionals and dental therapists would require some authority from the state legislature.

Committee members asked for more information about SIPI's early childhood development program. Dr. Allison said that SIPI offers an associate's degree and is working with New Mexico Highlands University to ensure that class credits can be transferred for students who want to pursue a four-year degree. She said that part of SIPI's ongoing curriculum development is to include native languages and cultural training into the program.

Turning to SIPI's current needs, Dr. Allison said that SIPI is seeking funding in three areas: 1) improvements to its library; 2) fencing to provide additional security for the campus; and 3) on-campus signage because the streets and buildings are not marked and emergency responders cannot currently find their way around campus. A committee member asked if there are adequate road signs off campus. Dr. Allison said that there are few existing signs and that they are hard to see on adjacent streets.

Motion 1

Representative Madalena made a motion, seconded by Senator Martinez, to have the committee work with the appropriate entities to seek appropriate signage on the nearby roads. The motion was approved without objection.

Sacred Item Sales and Return Resolution: Ten Southern Pueblo Governor's Council

Fred S. Vallo, Sr., governor, Pueblo of Acoma, related to the committee some of the challenges faced by pueblo governments to stop the sale of "items of cultural patrimony". As an example, he noted a recent auction of Acoma and Hopi items in Paris, France. He said that the Pueblo of Acoma had sued to stop an auction in Paris to prevent the sale of certain items and had filed a protest with the United Nations. He said that there are large gray and black markets in Native American cultural items. Federal laws against these sales are not adequate to stop these markets, and the pueblo is advocating for additional federal legislation. At the federal level, he said, the need is for tougher penalties, which are now misdemeanors, and a dedicated division within the DOI to monitor the markets. The pueblo is working to build recognition of the problem with eBay and other online marketers about the issue.

Governor Vallo provided a resolution by the Ten Southern Pueblo Governor's Council and said it is seeking two types of legislation: 1) a memorial condemning the sale of items of cultural patrimony; and 2) a method to prevent the sale of these items on state lands or at state facilities. He suggested that one method to stem the market in these items would be to make the lessees at local sales markets (e.g., the flea market at Expo New Mexico) liable for sale of stolen goods.

In the ensuing discussion, committee members raised the following ideas and concerns:

- the flea market may be a difficult target for action. It is so large and diverse, how would the state adequately police the market for sales of cultural items?;
- the need for a "knowledge" or "intent" requirement to violate the law, particularly for flea market and garage sale transactions;

- for items sold as arts or crafts, would a program requiring that those items be certified by the artisan and the seller where violations would result in fines scaled at four times the amount of the sale help slow the market in items of cultural patrimony?;
- the importance of retaining cultural significance and authenticity of pieces; and
- the opportunity to educate members of the public and visitors of the cultural and historic importance of items.

Ann Berkley Rodgers, Chestnut Law Offices, attorney for the Pueblo of Acoma, said that a large part of the problem stems from high-end sales events. She used an example of a sale at New Mexico Expo where the seller knew the item was legally protected. She feels that if the lessees at these shows are held liable, New Mexico would be less of a target by black marketers in these items.

Representative Clahchischilliage requested that the committee revisit this issue at its November 9-10 meeting and asked staff to work with Ms. Rogers on the wording of a potential joint memorial. The joint memorial will include language similar to the resolution from the All Pueblo Council of Governors and will be considered by the committee for endorsement at that time. It was requested that staff also work with LCS staff from the interim Courts, Corrections and Justice Committee to evaluate criminal issues associated with the proposed legislation.

Motion 2

Upon a motion made and duly seconded, the minutes of the August and September meetings of the IAC were approved by the committee.

State Resources Available to Native Entrepreneurs

Leslie A. Porter, director, Office of Business Advocacy (OBA), Economic Development Department (EDD), provided information to the committee about the OBA. The OBA was created in 2011 and functions as an advocate for businesses dealing with the state government. Its primary function is to help business owners break through regulatory roadblocks and red tape, while guiding business owners through the licensing and permitting processes. Ms. Porter highlighted the department's performance measures for the last five months. The OBA also manages the EDD's Business Resource Center — a one-stop shop that provides information about how to sustain and grow a business. The center cultivates strategic partnerships with other economic development or business service providers.

Wade Jackson, general counsel, EDD, discussed the programs, services and incentives provided through the department. Mr. Jackson described the provisions and guidelines for the Local Economic Development Act (LEDA) and the Job Training Incentive Program (JTIP). The EDD has also implemented a new program that funds economic development projects that produce sustainable outcomes, called the Local Economic Assistance and Development Support Program. Mr. Jackson also provided information for New Mexico FundIt and the Local Government Planning Fund under the New Mexico Finance Authority. The MainStreet program is another opportunity for communities to revitalize their traditional and/or historic commercial

districts. The Native American MainStreet program started with the Pueblo of Zuni, the first-ever Native American MainStreet program in the country. Mr. Jackson focused the rest of his presentation on the initiatives through the New Mexico Film Division to grow the industry in communities around the state.

In conclusion, Ms. Porter explained the various tax incentives offered to businesses to encourage and promote economic development around the state. The representatives from the EDD stood for questioning. Committee members made many inquiries about the presentation, including:

- specifics about qualifications and exemptions for the different programs;
- the application processes for the different programs;
- efforts being made by the EDD to reach out to tribal governments with information about the various programs and incentives available;
- the Pueblo of Zuni as the first Native American MainStreet;
- the importance of tracking businesses and individuals that come to the department for assistance;
- the IAC's interest in gathering information about how many Native Americans are utilizing the programs offered by the EDD;
- details about the OBA, including its operating budget and successes in overcoming regulatory hurdles faced by businesses; and
- successes of the different programs.

Committee members asked for additional information on job-creation numbers through the LEDA and JTIP. Members also expressed disappointment that the presentation did not address the EDD's efforts to reach out specifically to Native American businesses. The committee requested information detailing how many Native Americans are taking advantage of the programs and incentives along with an assessment of the EDD's success in serving this population.

Native American Teacher Training Redesign

Salvador Hector Ochoa, dean, College of Education, University of New Mexico (UNM), greeted the committee and introduced members of the faculty who were present at the meeting. Mr. Ochoa outlined the College of Education's eight initiatives aimed at better serving Native Americans and preserving their culture and heritage. In a collaborative effort, members of the faculty briefly presented their current programs:

1. the American Indian Language Policy Research and Teacher Training Center;
2. the American Indian educator mentor program;
3. the Family Listening/Circle Program: an intergenerational family prevention program;
4. Promoting Our Leadership Learning and Empowering Our Nations (POLLEN);
5. the Indigenous Research Lab;
6. the UNM native educational leadership Ed.D. cohort initiative;

7. Striking Eagle Native American Invitational (SENAI); and
8. early childhood transformative action groups at the Pueblo of San Felipe.

Mr. Ochoa noted that the programs are an effort to be responsive to the needs of the state and its Native American communities. Members inquired about the number of students in graduate and teacher education programs. The presenters explained that they are currently in the process of collecting assessment data so they can start tracking such information as graduation and retention rates. The College of Education is working on student exchange programs and distance education in an effort to keep students in their communities.

Committee members expressed concern over the increasing loss of native culture and, more specifically, native languages. Dr. Christine Sims, director of Native American language programs, UNM, shared the same concern and discussed efforts to preserve native languages, including training native language speakers to prepare and teach their native languages through on-site and on-campus workshops. These efforts have required a lot of outreach and community involvement, with hopes of helping students learn more about their own cultural identities.

Committee members praised the College of Education for its success and its important work. The presenters added that they are constantly working with communities, students and public schools to evaluate their curricula and figure out how best to serve their students.

Capital Funding Request for Navajo Nation Water Infrastructure

Jason John, branch manager, Water Management Branch, Navajo Department of Water Resources, addressed the committee about a funding request for water infrastructure in the Navajo Nation. Mr. John provided the IAC with a map illustrating all of the homes that do not have access to water within the Navajo Nation. The map shows more than 4,000 homes — approximately half of which are in New Mexico. A chart was distributed to committee members listing the current projects being funded through capital outlay funding and the Tribal Infrastructure Project Fund (TIF) program. Mr. John stated that the Navajo Nation has over \$700 million in water development needs. He discussed various projects listed on the chart. The Navajo Nation is requesting the financial support of the New Mexico Legislature in the amount of \$50 million to meet the needs of the projects listed.

Following the presentation, committee members inquired about the following:

- an explanation of the Navajo Nation's government structure;
- issues with disconnect and the need to follow projects from inception through completion;
- efforts to work closely with chapters to ensure completion of projects;
- New Mexico being the sole state that provides capital outlay to the Navajo Nation — neither Arizona nor Utah allocate capital outlay funds;
- the need to ensure that chapters are submitting the proper documentation for projects;
- proposed legislation acknowledging certified chapters;

- new audit requirements for capital outlay; and
- time constraints for the use of funding and concern about money being reverted.

A member of the committee asked how much money is being contributed to these water projects from the Navajo Nation. Moses Winston, general counsel and legislative coordinator, Indian Affairs Department (IAD), said that he would get that information to the committee.

Aging and Long-Term Services Department (ALTSD) Capital Outlay Process

Myles Copeland, secretary-designate, ALTSD, said that more than 21,000 American Indian elders reside in New Mexico, not including those in urban areas. The ALTSD's top services include congregate meals, home-delivered meals, transportation, recreation, information and assistance and adult daycare. Capital outlay funds help to address challenges facing the elderly, such as hunger and the lack of caregiving. The ALTSD is targeting entities that have not applied in the past two years or have submitted un-fundable applications. Secretary Copeland noted that the ALTSD is working with facilities to provide the technical assistance they need for the application process, adding that one does not need to be great at grant writing to run a great senior center. There are many worthy projects that just need guidance with the capital outlay process, a task with which the ALTSD is willing to help.

In response to questions from the committee, Secretary Copeland addressed how the ALTSD could help with specific projects. Members asked for updates on projects seeking funding around the state. The ALTSD is going to be sponsoring a training session on capital outlay for 2017, where it can assist attendees with their applications.

Recess

The committee recessed at 4:56 p.m.

Tuesday, October 27

Senator Pinto reconvened the meeting at 10:01 a.m. at Casino Hollywood in the Pueblo of San Felipe and asked Representative Clahchischillia to chair the meeting. Committee members and staff were asked to introduce themselves. Representative Madalena provided an invocation in Towa.

Welcome and Status Update

Debra Haaland, tribal administrator, Pueblo of San Felipe, welcomed the committee to the pueblo and said that many tribal members were preparing for an upcoming religious event. Ms. Haaland thanked the committee for the work it does on behalf of Native Americans in New Mexico. Members of the pueblo addressed the committee with various issues.

Pinu'u Stout, Department of Natural Resources, Pueblo of San Felipe, addressed the committee regarding some of the issues facing the pueblo and other tribes in the state. Ms. Stout

expressed concern over the removal of cultural items and recounted a recent incident with actors filming in the area who admitted to taking items. State law lacks a prohibition from taking these types of items from private land with the landowner's permission. Ms. Stout requested the support of the committee to convene a work or study group to look at these issues and what it would entail to enact legislation to protect native artifacts.

Representative Clahchischilliage informed Ms. Stout that the committee had a presentation on this issue the previous day and shared the same concerns. A member of the committee requested that tribal, state and federal representatives be added to the work group being requested.

Sara Candelaria, elderly services director, Pueblo of San Felipe, explained some of the barriers to providing quality services to elders in the community. Ms. Candelaria inquired as to why tribes are not eligible for federal Title III funding. With an increased demand for services for seniors, there is more need for additional funding assistance and capital outlay.

Bruce Garcia, language coordinator, Pueblo of San Felipe, discussed efforts to preserve the Keres language. About \$30,000 for those efforts comes from the Public Education Department (PED), representing a \$20,000 decrease in funding. Mr. Garcia said the pueblo has worked hard to establish classes and Head Start programs to reach out to the younger generation, but more funding is necessary to develop curricula and standards for language preservation.

Alissa Chavez Lowe, education director, Pueblo of San Felipe, explained the issues of public transportation that the pueblo is facing when trying to provide support and services for students. The pueblo is currently working with the Rio Metro Regional Transit District to create a partnership. Ms. Lowe would like to see the PED expand definitions to include Head Start in funding, which would allow for increased opportunity to reach out to students at an earlier age. Funding would help meet the increasing expansion of online education. Ms. Lowe also expressed concern that for-profit schools be held to the same standards as public schools. There is a concern for ensuring that these schools are properly preparing students for gainful employment and college. Ms. Lowe thanked the members of the legislature for the funding for the pueblo's public library, which enables the library to offer more services to the community.

Committee members engaged in discussion about the presentation. A member recommended that a written statement from Ms. Candelaria be given to the ALTSD for response. Members expressed support for the need to preserve native languages and thanked Mr. Garcia for his work in that area.

Overview of the Santa Fe Indian Center (SFIC): Resources, Partnerships and Goals

Kathryn Harris Tijerina, vice chair, SFIC, provided background on the SFIC for the committee. The SFIC was formed in 2008 in response to many conversations proposing the need for a center. The SFIC is governed by an all-volunteer board of directors, the majority of whom are Native American. The center is designed by and for American Indian people with the

mission of supporting, promoting and enriching this vital, diverse community by identifying and serving the needs and interests of its people. Ms. Tijerina noted that Indian people are communal, and they desperately need a communal place in Santa Fe. There has never been funding for staff or a physical building. The SFIC is a virtual center and lacks a physical location.

Ms. Tijerina highlighted the populations the center serves, the value of Indian centers, programs offered by the SFIC and the needs of the community. Poverty, homelessness and alcohol-related deaths continue to be major issues in Native American communities. The SFIC proposed a 2016 budget in the amount of \$272,000 and requests that the IAC endorse an appropriations bill.

The committee discussed the following points with the presenters:

- additional resources to provide assistance to the SFIC, such as the Indian Health Service and the National Council of Urban Indian Health;
- challenges associated with registering urban Indian children with one tribe; and
- the outcome of a recent meeting with the IAD.

Motion 3

A motion was made by Representative Madalena, seconded by Senator Martinez, to direct staff to draft legislation for the full amount requested by the SFIC, citing the IAD as the fiscal agent. After discussion by the committee, the amount of the appropriation request was increased to \$372,000 to include services for urban Indians in Albuquerque and Santa Fe. The draft legislation would be brought before the committee at its final meeting for endorsement.

Update on Class III Indian Gaming

Representatives from the Gaming Control Board (GCB) met with the IAC to provide an update on the 2015 Tribal-State Class III Indian Gaming Compact. To date, 12 gaming tribes have signed on to the 2015 compact; those that remain under the 2007 compact are the pueblos of Laguna, Sandia, San Felipe and Santa Ana. There are currently 22 casinos operated by 14 tribes; two are included in the compact but are not operating a casino; one (the Pueblo of Pojoaque) is operating a class III gaming casino without a compact.

Jeffrey S. Landers, board member, GCB, outlined the provisions of the 2015 compact. On the issue of free play, the 2015 compact states that promotional credits that may not be exchanged for cash are not counted as revenue for calculating adjusted net win. Notable differences between the 2007 and 2015 compacts include regulatory oversight, hours of operation and a lower percentage of revenue share by the gaming tribes to the state.

The committee addressed the following topics with the GCB panel:

- the effectiveness of compulsive gambling funds;

- what is being done regarding free play with the tribes not under the 2015 compact;
- an update on the secretarial procedures lawsuit regarding the Pueblo of Pojoaque;
- an update on litigation between the Pueblo of Pojoaque and the five members of the GCB, as well as others named individually;
- deferred action on the issuance of licenses of vendors;
- the amount of regulatory fees;
- the meeting schedule of the GCB; and
- the increasing popularity of online sports betting and actions taken by other states regarding the issue.

The IAC extended the opportunity for the Pueblo of Pojoaque to respond to the GCB's update on the litigation and vendor licenses. Joseph M. Talachy, governor, Pueblo of Pojoaque, remarked that New Mexico is in a declining gaming market, making negotiations difficult. The Pueblo of Pojoaque views seeking secretarial procedures as its option. In regard to the injunction with the GCB, the pueblo is working to resolve the issue. The inaction by the GCB has caused vendors to be intimidated about doing business with the pueblo. Governor Talachy also expressed concerns about the increasing popularity of online gaming.

Overview of the TIF Program and Changes to the TIF Guidelines

Mr. Winston provided the committee with three separate handouts covering the TIF program, a project status update and proposed changes for the Tribal Infrastructure Board guidelines and procedures.

TIF Program Overview. There are 23 nations, tribes and pueblos located in New Mexico, including 54 chapters of the Navajo Nation. From 2006 through 2015, the TIF has funded 188 projects, totaling \$83,446,428. Mr. Winston provided a breakdown of project distribution by nation, tribe, pueblo and chapter, respectively. There are still over \$2.2 billion in tribal infrastructure needs and over \$89 billion in tribal water, wastewater and solid waste needs.

IAD TIF and Capital Outlay Project Status Update Report. In 2015, the Tribal Infrastructure Board funded 32 projects in the amount of \$14,273,958. Capital outlay allocations from the legislature totaled \$4,633,411 for the funding of 42 projects for 2015. This document provides a thorough breakdown of all projects, along with the current status of each one. Information for 2012 through 2014 is also included.

Changes to the Tribal Infrastructure Board's Guidelines and Procedures. Mr. Winston briefed the committee on the proposed changes. He said the changes address the duties of the board to comply with statute; the definition change for the term "project"; and revision of the early termination on incomplete projects clause.

The following are some questions raised and topics addressed in response to the presentation.

- A committee member requested the number of vetoes on capital outlay projects in tribal areas.
- Members discussed the implications of the change regarding early termination and the importance of entities using allocated money to avoid reversion of funds.
- A definition of the term "master plan" was requested.
- Several committee members expressed dissatisfaction with the proposed changes and the lack of input from tribal entities on the matter. There was concern that the proposal had inadequate tribal collaboration, and it was recommended that adoption of the changes be postponed to allow for tribal input.
- There is a need for increased communication and notification about upcoming meetings to the committee, tribal leaders and the public.
- There was discussion about the traditional interpretation by the legislature on use of capital outlay and the concept of "bricks and mortar".
- The IAD needs to take a more instrumental role in amending Tribal Infrastructure Board procedures.

In response to the discussion from the committee, Kelly Zunie, secretary of Indian affairs, added that the department has to be accountable for the spending and usage of money in the TIF; it is that accountability that keeps it viable. Accountability must be held among the board, the IAD and, most importantly, the tribes. Secretary Zunie added that there are other recommended changes, but in light of the perceived lack of tribal collaboration and adequate notice, the board has decided to limit the proposed changes.

Adjournment

There being no further business before the committee, the IAC adjourned at 4:12 p.m.